

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 21683 of 2005(F)

PETITIONER:

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1. THE GENERAL SECRETARY,
AFDC EMPLOYEES UNION, EZHUPUNNA P.O.
 2. C.A.GEORGE, WORKER, AFDC LTD.,
EZHUPUNNA P.O. NOW RESIDING AT KUNDECHIRA FROM
CHEANAPARAMBIL, PATTANAKKAD P.O. CHERTHALA
688 531.
 3. JIJI JOHN, WORKER, AFDC LTD.,
EZHUPUNNA P.O. RESIDING AT KAREEKKALAM HOUSE,
OLATHALA, PATTANAKKAD P.O. 688 531.
 4. DELEEP KUMAR C.R. WORKER, AFDC LTD.,
EZHUPUNNA P.O. RESIDING AT ANJILIKKAL HOUSE,
EZHUPUNNA SOUTH P.O. CHERTHALA.

BY ADV. SRI.N.R.CHANDRASEKHARAN

RESPONDENTS:

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1. THE MANAGER, ACCELERATED FREEZE DRYING
COMPANY LTD., EZHUPUNNA P.O. CHERTHALA TALUK.
 2. THE LABOUR COURT, KOLLAM.

BY ADV. .
SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.P.BENNY THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18/07/2007, ALONG WITH WPC NO. 25354 OF 2005
THE COURT ON 18/07/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF REFERENCE ORDER FOR ADJUDICATION BY LABOUR COURT AS PER GOVERNMENT ORDER GO(RT)NO.2069/05/LBR DTD 29.8.1995
- EXT.P2: COPY OF THE CLAIM STATEMENT DTD 25.7.1997 OF THE UNION IN I.D.123/95 BEFORE THE LABOUR COURT, KOLLAM.
- EXT.P3: COPY OF THE COUNTER STATEMENT DTD 24.4.1998 IN I.D.123/95 BY THE 1ST RESPONDENT MANAGEMENT.
- EXT.P4: COPY OF THE REJOINDER DTD 24.7.1998 FILED BY THE UNION IN I.D.123/95.
- EXT.P5: COPY OF THE ORDER NO.B(4) 7732/93 DTD 23.5.1995 IN THE PROCEEDINGS OF THE CERTIFYING OFFICER.
- EXT.P6: COPY OF ARGUMENT NOTE DTD 31.7.2003 OF THE COUNSEL FOR THE UNION IN I.D.123/1995.
- EXT.P7: COPY OF BRIEF ARGUMENT NOTE DATED 14.8.2003 OF THE MANAGEMENT IN I.D.123/95.
- EXT.P8: COPY OF THE AWARD DTD 14.3.2005 IN I.D.123/95 BEFORE THE LABOUR COURT, KOLLAM TOGETHER WITH THE APPENDED PRELIMINARY ORDER DTD 19.8.2004 IN THE ABOVE AWARD.
- EXT.P9: COPY OF THE LAWYER NOTICE DTD 6.6.2005 ISSUED FOR THE PETITIONER 2,3, & 4 BY REGISTERED POST TO THE 1ST RESPONDENT.
- EXT.P10: COPY OF THE SCHEDULE SHOWING THE ARREARS OF WAGES AND ATTENDED BENEFITS OF A SINGLE WORKMEN FROM 17.12.93 TO 5.6.2005 OF M/S.AFDC TD, EZHUPUNNA P.O.
- EXT.P11: COPY OF THE POSTED ACKNOWLEDGMENT CARD SIGNED BY THE 1ST RESPONDENT ON 7.6.2005.

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// TRUE COPY//

P.A. TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NOs.21683,25354 OF 2005

DATED THIS THE 18th DAY OF JULY, 2007

JUDGMENT

The management and union in the same industrial dispute has come up before this Court challenging the award in that industrial dispute by filing these two writ petitions. W.P.(C)No.25354/05 is filed by the management and W.P.(C)No.21683/05 is filed by the union. For convenience I would refer to the pleadings and documents available in W.P.(C)No.25354/05. The industrial dispute is in I.D.No.123/95 before the Labour Court, Kollam. The issue referred for adjudication was as follows:

“Whether the dismissal of four workers namely S/Sri. C.A. George, Joy Chacko, Dileep Kumar and Jiji John is justifiable, if not, what remedy entitled to them”

Since the dismissal of the workers were after conducting domestic enquiries , the Labour Court considered the validity of the enquiry as a preliminary point and came to the conclusion that the enquiries are unsustainable. Therefore, the management was given opportunity to adduce fresh evidence. The management adduced fresh evidence. However, the evidence did not find favour with the Labour Court and

the Labour Court found that the charges were not proved. Accordingly, by Ext.P5 final award, the dismissal of the four workers by the management was held to be unjustified and they were directed to be reinstated with 25% backwages and attendant benefits. The management is challenging Ext.P14 preliminary order and Ext.P15 final award. The union espousing the cause of the workmen are challenging that part of the award by which 75% backwages were denied to them.

2. The contention of the management is that the findings in the preliminary order, that the charges were vague and the enquiries were not conducted properly, are unsustainable. According to the Management, Ext.P2 show cause notice was first issued to the workmen on the basis of Ext.P1 complaint from the Supervisor. After obtaining replies from them, Ext.P4 was issued intimating them that the explanations are unsatisfactory and therefore domestic enquiries have been ordered. The submission is that Ext.P2 read with Ext.P4, would show that the charges were definite and not at all vague. He would further submit that the finding that the preliminary order is bad is also perverse. The learned counsel for the management further submits that even assuming that even if the findings in the domestic enquiry cannot be sustained, on the basis of the evidence adduced before the Labour Court, the management has clearly proved the misconducts against

the workmen. According to the learned counsel for the management since the management has succeeded in proving the charges, the punishment of dismissal imposed on the workmen should have been upheld as the punishment was commensurate with the gravity of the misconduct. In support of the contention, they rely on the decisions of the Supreme Court of India in **Bharat Forge Co.Ltd. Vs. Uttam Manohar Nakate (2205 (1) CLR 533)** and the Bombay High Court in **Golden Chemicals Ltd Vs. Mohamad Azam Dil & Anr. (2007 LLR 432)** as also that of the Supreme Court of India in **State of Hariyana and another Vs. Rattan Singh (1982(1) LLJ 46)**.

3. In answer to the contentions of the management, the learned counsel for the Union would submit that the preliminary order and the findings in the final award are perfectly valid and proper and are not liable to be interfered with by this Court. He would take me through the findings in the case and would attempt to show that there is absolutely no evidence adduced by the management to prove the misconduct against the workmen.

4. I have considered the rival contentions in detail. I will first deal with the question as to whether the charges are vague. For that I must first consider the original show cause notice issued to the workers which is produced as Ext.P2. The same which is in Malayalam, roughly translated into English, would read as follows.

"On 16.12.93, you were working in the third shift (1.00 a.m. to 9.00 a.m.). But from 2.40 a.m. onwards you, without doing the work, you went to the rest room and slept there. When you were so found sleeping, the Junior Supervisor Sri. Nelson at 3.40 a.m. called you, but you refused to obey and behaved indecently towards him. Thereafter, as directed by the shift -in -charge and the Asst. Manager, Sri. Viji Antony, Senior Supervisor Sri. Sasidharan K.V. came and called you thrice (at 3.50 a.m., 4.00 a.m., 4.15 a.m.), in spite of which you refused to come out of the rest room and to continue the work. Thereafter, you came for work only at 6.15.

Your above acts constitute very serious dereliction of duty"

To this, Ext.P3 reply was filed by the workers. The management issued Ext.P4 wherein the show cause notice and reply thereto were referred to and it was stated that the worker has committed the following misconducts.

- "1. On 16.12.93 while on the third shift, worker slept.
2. The worker behaved indecently to Supervisor Mr. Nelson.
3. The worker behaved irresponsibly at a place where perishable food items were being handled."

5. On a reading of Exts.P2 and P4 together, I am not satisfied that the charges are vague enough to hold that the enquiry is bad on that ground. At least, the first charge is clearly definite and not at all vague. Since the first charge alone was seriously raised by the management before the Labour Court at the time of adducing fresh evidence, I am inclined to consider whether that

charge has been proved before the Labour Court first, since if the same is held in the affirmative it is not necessary to go into the question as to whether the preliminary order holding the enquiry as invalid is correct or not.

6. The union has produced the evidence of the witnesses before the Labour Court along with their counter affidavit to the petition under Section 17B. The Labour Court found that the first charge of sleeping while on duty has not been proved on the ground that the person, who went to the workers for calling them for duty 2 or 3 times, namely, Sri. Nelson, was not examined as a witness. This finding is in paragraph 7 of Ext.P15 award, which reads thus.

“ Now, the question is whether the management has been successful in proving the allegation in charge No.1 that the 4 workers while working in the shift from 1.00 a.m. to 9.00 a.m. were sleeping in the rest room between 3.30 a.m. and 6 a.m. Even the charge issued to the workers in this regard does not specify the time and no statement of allegations are appended to the charge. Only in the evidence it is elaborated that they were sleeping at the rest room between 3.30 a.m. to 6.15 a.m. MW2 the Supervisor examined does not specifically say that he has seen the employees sleeping in the rest room, nor has he an allegation that he went to the rest room and called the workers for duty. MW2 admitted that he has given them break for rest at 2.40 a.m. and according to the evidence of MW2, it is one Nelson, a Junior Supervisor, who went to the workers for calling them for duty 2 or 3 times. This person was not cited and examined. It is stated that MW2 reported the matter to the Assistant Manger and he had also gone to call the workers for duty. This man was also not examined to say that he has seen the persons sleeping while on duty and in

spite of his calling them they refused to attend duty."

(underlining supplied)

7. I am of opinion that this finding particularly the underlined portion is not in accordance with the evidence given by Sri. Sasidharan K.V., Shift Supervisor. The case of the management was that at 3.40 a.m. Sri. Nelson, Junior Supervisor went to call the workers in the rest room and the workers were found sleeping and they did not come for duty. Thereafter, it was the said Sasidharan, who went to call them thrice between 3.50 a.m. and 4.15 a.m., but the Labour Court has misread this evidence and entered a finding that it was the said Sri. Nelson, who went to call the workers two or three times. This is clearly a perverse finding based on the evidence of Sri. Sasidharan K.V., who categorically stated that he, himself had gone to call the workers thrice between 3.15 a.m. and 4.50 a.m.

8. The learned counsel for the Union would vehemently argue that going by the evidence of the management read with the evidence of the workmen, there was no sufficient evidence to find the workmen guilty. I do not agree with the learned counsel for the Union. In Ext.R1(k) deposition of Sri. Sasidharan K.V. (MW2), he categorically stated that at 2.40 a.m., the workers were given rest till 3.40 a.m. and when they were called by Sri. Nelson, Junior Supervisor at 3.40 a.m., they were sleeping in the rest room and in

spite of calling them, they did not come for work. He then categorically stated that between 3.50 a.m. and 4.15 a.m. thrice he, himself went and called the workers and they did not respond. He also stated that thereafter he reported the matter to the Asst. Manager, Sri. Viji Antony, who also called the workers, who responded angrily. He further stated that it was at 6.15 that they came for work. This evidence is more than sufficient in a labour case to prove that the management has proved the misconduct of sleeping while on duty. I am constrained to observe that the Labour Court weighed the evidence as in a criminal case. It is settled law that the degree of proof required in a labour case is neither that of proof beyond a reasonable doubt as in a criminal case or preponderance of probability as in a civil case. The strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.(see **Rattan Singh's Case**, supra). Therefore just because the said Nelso was not examined, the same does not in any way undermine the evidence of MW2.

9. Of course, the learned counsel for the Union would say that the workers were engaged in the work of pre-processing and only because they did not have enough work, they did not come for

work. I do not find any merit in this contention also. In Ext.R1(m), evidence of one of the workers, he had categorically stated that during the shift in question, the workers were given the work of "case loading and shifting". Their contention was that only because that work was not there, they went to take rest. As and when there was work, they came and did the work is the contention. But the Union themselves in cross examination of MW2 brought out that there was in fact work of loading which needed to be done and the concerned workers did not attend that work in spite of direction in that regard. They also brought out in cross examination that there were other workers doing the very same work, at the relevant time.

10. In view of the above discussion, I am of opinion that the finding of the Labour Court that the first charge has not been proved is clearly perverse. That being so, I am inclined to hold that the workers concerned were guilty of the first charge of sleeping while on duty.

11. The learned counsel for the management would contend that once sleeping while on duty is proved as a misconduct committed by the workmen, going by the decisions quoted by them, (**Bharat Forge's Case** and **Golden Chemicals case**, supra) clearly, the punishment of dismissal cannot be stated to be disproportionate to the gravity of the misconduct. Going through the decisions, I find that in those decisions, the Courts came to that

conclusion not merely based on the misconduct alone but taking into account the attendant circumstances and based on the past records of the workmen involved in that case. The management has no case that the past conduct of the workmen was in any way faulty. Therefore, I am not inclined to apply the very same yardstick in this case also. Therefore, I do not think that the punishment of dismissal imposed on the workmen by the management was the proper punishment and I find that it was in fact excessive. Therefore, while holding that the first charge against the workmen was proved, I do not find it necessary to interfere with the ultimate relief granted by the Labour Court to the workers, namely reinstatement with 25% backwages and attendant benefits. I feel that the denial of 75% backwages would be sufficient punishment for the workmen.

12. I also note the two decisions referred to by the learned counsel for the Union namely, **Hindustan Tin works Pvt.Ltd and The Employees of M/s. Hindustan Tin Works Pvt. Ltd. And others (1979(2) SCC 80** and **Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SC 112)**. Those decisions are relied on to contend that payment of full backwages is the rule when the misconduct is found to be not proved. I am of opinion that those decisions are not applicable, once I found that the first charge of sleeping while on duty has been clearly found against the

workmen. In the above circumstances, although I set aside the finding in Ext.P5 that the first charge has not been proved, I am not interfering with the ultimate relief granted to the workmen in the award.

These writ petitions are disposed of as above.

S. SIRI JAGAN, JUDGE

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